

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.217 of 2019

1. Purushottam Kumar Singh @ Purushottam Kumar Son of Late Nand Kumar Singh Resident of Balia Hata, Village- Basdiha, P.S. - Nasariganj, District- Rohtas.
2. Smt. Prabhawati Kumari @ Prabhawati Singh Wife of Purushottam Kumar Singh Resident of Balia Hata, Village- Basdiha, P.S.- Nasariganj, District- Rohtas.

... .. Appellant/s

Versus

1. Navneet Kumar Singh @ Dinesh Kumar Singh Son of Late Nand Kumar Singh Reside Flat No. 1A, Sarojani Enclave, Yamuna, P.O.- Bariatu, P.S.- Sadar Ranchi, Deepa Toli, Ranchi- 834009.
2. Shivant Raj (Minor) Son of Navneet Kumar Singh @ Dinesh Kumar Singh Under guardianship of his father Navneet Kumar Singh @ Dinesh Kumar Singh, the natural guardian, who has no interest to that of the minor, Reside Flat No. 1A, Sarojani Enclave, Yamuna, P.O.- Bariatu, P.S.- Sadar Ranchi, Deepa Toli, Ranchi- 834009.
3. Most. Prabhavati Kunwar Wife of Late Nand Kumar Singh Resident of Village- Balia Hata, Basdiha, P.S.- Nasariganj, District- Rohtas, Reside Flat No. 1A, Sarojani Enclave, Yamuna, P.O.- Bariatu, P.S.- Sadar Ranchi, Deepa Toli, Ranchi- 834009.
4. Aditya Singh @ Piyus Ranjan Son of Purushottam Kumar Singh Resident of Village- Balia Hata, Basdiha, P.S.- Nasariganj, District- Rohtas.
5. Pallav Ranjan @ Pinku Son of Purushottam Kumar Singh Resident of Village- Balia Hata, Basdiha, P.S.- Nasariganj, District- Rohtas.

... .. Respondent/s

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 17-05-2019

Heard the parties.

2. This miscellaneous appeal has been filed on behalf of defendants/appellants against the order dated 16.03.2019 passed by Sub-Judge-1st, Bikramganj, Rohtas passed in Title Suit No. 201 of 2013 by which the learned court below has granted temporary injunction and has restrained the defendants/appellants from alienating any part of suit land or to make any construction over the suit land.



3. Plaintiffs/respondents had filed a suit for partition of joint family ancestral property stating therein that R.S. Khatityan was prepared in the name of Late Nand Kumar Singh father of plaintiff and defendant and they are coming in possession over the suit land. The joint family properties are still joint and there has been no partition between the parties by metes and bounds and plaintiffs reside in Ranchi and taking advantage of his absence a sale deed has been executed by appellant No. 1 in favour of appellant No. 2 in the year 2015 and as such he has brought the suit for partition of joint family property as well as setting aside of aforesaid sale deed.

4. Defendants/appellants have stated that after death of their father they jointly filed a petition before the Circle Officer, Karakat, Rohtas stating that they have partitioned the ancestral land between them and requested him to mutate the lands as per partition and accordingly correction slip dated 20.09.2011 was issued in Mutation Case No. 2177/2011-12 in separate names of plaintiff and defendant and thereafter rent receipts were also issued separately and parties are in possession over the ancestral land as per their share allotted in partition.

5. Defendants applied for dealership of Petrol Pump of IOC and appeared in interview on 21.08.2012 and was asked to arrange a land measuring 45 meter X 45 meter = 4025 sq meter i.e. 51.5 decimal for opening of retail outlet and he provided the land and he was awarded dealership of retail outlet on state highway 15 in



Karakat, Rohtas for which appellant No. 1 executed a registered sale deed in the year 2015 for construction of petrol pump and thereafter said land got converted for business purpose by conversion order and thereafter present Title Suit has been filed by plaintiffs/respondents giving rise to Title Suit No. 201 of 2018.

6. Plaintiffs/respondents filed a petition under Order 39 Rule 1 and 2 for grant of injunction and the learned court below granted ex parte order dated 05.09.2018 of status quo against which defendant/appellants filed M.A. No. 870 of 2018 and same was set aside and remitted to the court below to pass fresh order after hearing both the parties and the learned court below has passed order dated 16.03.2019 which is impugned in this miscellaneous appeal by which order of injunction has been passed by the court below and construction work at the site has been stopped.

7. During pendency of the injunction petition a Pleader Commissioner was also appointed who inspected the site on 25.02.2019 although same was done in absence of defendants/appellants and he submitted his report to the learned court below on 26.02.2019. In the report it has been stated that pursuant to order dated 20.02.2019 Advocate Commissioner went over the site on 21.02.2013 and fixed 25.02.2019 for inspection of site and reported that he found some construction over the site on plot No. 525 and there has been filling of earth measuring an area 190ft x 180ft. for construction of fuel station. He found the disputed land



measured 4 acres and in mid of which construction work on 190ft. x 180ft. was found. A site plan has also been enclosed with Advocate Commissioner's report.

8. After hearing Mr. Kamal Nayan Chaubey, Sr. Advocate on behalf of appellants/defendants and Mr. Shashi Shekhar Dwivedi Sr. Counsel appearing on behalf of plaintiffs/respondents the order dated 16.03.2019 which is impugned in this miscellaneous appeal and same is modified to the extent that defendants/appellants shall continue to construct petrol pump for which he has been granted dealership by the Indian Oil Corporation for opening of its retail outlet which is being constructed in the middle portion of disputed land of plot No. 525. As far as remaining part of other suit lands is concerned the order of injunction restraining the defendants from alienating any part of suit lands or making any construction over the remaining part of suit lands requires no interference.

9. This miscellaneous appeal is disposed of with modification of the order as indicated above. It is made clear that this order is subject to final outcome of judgement and decree to be passed in Title Suit.

veena/-

(S. Kumar, J)

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

